IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 225 of 2004

PRABHURAM
V/S
KARAN SINGH

Mr. GR SINGHVI, for the appellant / petitioner

Mr. CR JAKHAR, for the respondent

Date of Order : 3.10.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, perused the impugned judgments.

It is contended by learned counsel for the appellant that there is no evidence on record to show that the wall in question is joint wall, and secondly even if the appellant has opened the openings, the plaintiff can very well close them from his own side, and could not get injunction against the appellant to close them.

Learned counsel for the appellant, at my request, read to me the statement of plaintiff in extenso.

In my view, a bare reading of that statement itself is sufficient to establish on record that the wall in between the two houses is joint property. Admittedly, in the ground floor of the wall, there are two Almirahs opening on the side of the plaintiff, and there is no justification for existence of those Almirahs except that

the wall is joint. It is significant to note that no cross-examination was directed to the plaintiff on the factum of existence of the two Almirahs opening on the side of the plaintiff, nor was he even suggested that the wall in question is not joint wall as deposed by him in examination-in-chief. In these circumstances, it cannot be said that the finding recorded by the learned Courts below about the wall being joint, requires any interference in my second appellate jurisdiction.

So far as the challenge to the injunction to close the openings is concerned, it is established law that one of the co-owners has no right to raise construction over the joint wall. In such circumstances, it is good enough that the plaintiff did not file the suit for demolition of the upper storey wall being raised by the appellant and it confined only to the extent of closure of the opening.

The appeal thus, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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